Supreme Court, U.S.
FILED
APR 3 1985
ALEXANDER L. STEVAS
CLERK

84-1638

NO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

CALVIN HOLDERMAN, JR.,

Petitioner.

VS.

UNITED STATES OF AMERICA,

Respondent.

ON DIRECT APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT PURSUANT TO ARTICLE III, CONSTITUTION, AND TITLE 28, U.S.C. 1252.

JURISDICTIONAL STATEMENT

CALVIN HOLDERMAN, JR.
APPELLANT
RFD 1, GLEN EYRIE FARM
NEW MILFORD, CT 06776

APRIL 3, 1985

QUESTIONS PRESENTED

(1) Did the district court and the circuit court of appeals ever obtain lawful jurisdiction over the person and/or the subject matter of this appeal?

(2) Can the district court ever lawfully proceed after its jurisdiction has been challenged, without first addressing and settling the question of jurisdiction?

(3) Can the district court ever lawfully proceed after a case has been removed to a circuit court?

(4) Can the district court and the circuit court ever lawfully deny a stay of proceedings pending appeal?

(5) Has the United States Court of Appeals for the Second Circuit unlawfully become a rubber stamp adjunct to the United States Dictrict Court for the District of Connecticut?

(6) Is the Constitution of the United States of America still in full force and effect as the Supreme Law of the Land?

(7) Did the district court and/or the circuit court of appeals invalidate any provisions of the Constitution of the United States of America and/or the Constitution of the State of Connecticut?

(8) Is the Act of Congress known as the Bill of Rights [first 10 Articles of Amendment to the U.S. Constitution] still in full force and effect?

(9) Did the district court and/or the circuit court of appeals invalidate any provisions of the Bill of Rights [first 10 Articles of Amendment to the U.S. Constitution]?

(10) Is there any validity to the Act of Congress known as the United States Code?

(11) Did the district court and/or the

circuit court of appeals invalidate any provision of any Act of Congress contained in the United States Code?

(12) In light of Reorganization Plan No. 1 of 1952, which reorganized the BUREAU of Internal Revenue, and the correspondence from Internal Revenue Service regarding Treasury Memo, is the Internal Revenue Service a lawful part of the United States Government?

(13) Did the district court and/or the circuit court of appeals invalidate the Act of Congress contained in Title 1, U.S.Code, § 204?

(14) Did the district court and/or the circuit court of appeals invalidate the Acts of Congress contained in Title 18, U.S.Code, §§ 241, 242, 872, 1621, 1633, and 4001?

(15) Did the district court and/or the circuit court of appeals invalidate the

Acts of Congress contained in Title 28, U.S.Code, §§ 455, and 2072?

(16) Did the district court and/or the circuit court of appeals usurp Legislative Power by making Title 26, U.S.C., into LAW in the instant proceedings?

(17) Did the district court proceed in a matter in which the plaintiff failed to lawfully invoke and factually prove the jurisdiction of said court over the person of the defendant-appellant and the subject matter in this case?

(18) Did the circuit court of appeals proceed in a case in which the plaintiff failed to lawfully invoke and factually prove the jurisdiction of the lower court over the person of the defendant-appellant and the subject matter in this case?

(19) Did the Executive proceed to obtain an "indictment" in a matter where no crime, felony, misdemeanor, or vio-

lation of any United States law was committed, or alleged to have been committed by the defendant?

(20) Did the courts proceed on the basis of an unlawful "indictment" which they knew to be false and fraudulent, and in which they were notified by the defendant-appellant of the unlawful nature of said "indictment"?

(21) Did the Executive and the Judicial departments conspire to deprive a citizen of Life, Liberty, and Property, under color of law?

(22) Did the U.S. Magistrate unlawfully act as the attorney for the defendant, by entering a "plea" on his behalf?

(23) Did the U.S. Magistrate enter a verdict of NOT GUILTY in entering a "plea" on behalf of the appellant?

(24) Did the district court, the

circuit court of appeals, and the Executive conspire to stonewall and unlawfully bury a verified counter-complaint?

(25) Was the integrity of the federal court system placed in jeopardy by the conspiracy against the unalienable rights of the appellant?

(26) Does this Court have the courage and determination to fairly and impartially address the issues raised in this appeal; issues which have never been addressed or settled by this Court, in spite of the "lateness of the hour".

(27) Does this Court have the courage and determination to fairly and impartially address the issues raised in this appeal; issues which have never been addressed or settled by this Court, and in the process, straighten out the rat's nests which have created and caused such

atrocites as the murder of GORDON WENDELL KAHL and the unlawful incarceration of many, many innocent law-abiding citizens over the years?

LIST OF ALL PARTIES

The named appellee is comprehensive, and would include each and every person in the United States of America. However, every person in the United States of America has not consented to act against the appellant. Only certain persons alleging to be acting on behalf of the United States of America are true parties to this appeal. Among these parties, but not limited to said parties, are:

For the District of Connecticut:

ALAN H. NEVAS, U.S. Attorney
KURT F. ZIMMERMAN, Asst. U.S. Attorney
DONNA FATSI, Asst. U.S. Attorney
ALBERT S. DABROWSKI, Asst. U.S. Atty.
MARY ANN DEFFLEY, Grand Jury Foreman
F. OWEN EAGAN, U.S. Magistrate
ARTHUR H. LATIMER, U.S. Magistrate

SYLVESTER MARKOWSKI, District Court Clerk
LORI SEIFERT, Deputy clerk of the District Court
M. JOSEPH BLUMENFELD, U.S.D. Judge
JOSE A. CABRANES, U.S.D. Judge

For the U.S. Court of Appeals for the Second Circuit:

GEORGE C. PRATT, Circuit Judge
WALTER R. MANSFIELD, Circuit Judge
THOMAS J. MESKILL, Circuit Judge
RICHARD J. CARDAMONE, Circuit Judge
JAMES L. OAKES, Circuit Judge
JON O. NEWMAN, Circuit Judge
AMALYA L. KEARSE, Circuit Judge
J. EDWARD LUMBARD, Circuit Judge
LAWRENCE W. PIERCE, Circuit Judge
ELAINE B. GOLDSMITH, Chief Clerk
THURGOOD MARSHALL, Associate Justice of U.S. Supreme Court for the Second Circuit Court of Appeals

TABLE OF CONTENTS

	Page
Questions Presented	i
List of all Parties	vii
Table of Authorities	x
Opinions below	1
Preface	3
Jurisdictional Grounds in This Court	5
Constitutional Provisions	10
Statement of the case	16
Criminal vs. Civil	30
Acts of Congress invalidated	34
Reasons why questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution	39
The United States Code	40
The United States Code as Legal Evidence	49
The United States Code from 1974 to date	52
Unlawful merging of the courts	54
Lateness of the Hour	58
Conclusion	62
Certificate of service	63

TABLE OF AUTHORITIES

	Page
Constitution of the United States:	
Art. I, Sec. 1	10, 18, 35, 45, 48, 51
Art. I, Sec. 8	10
Art. I, Sec. 9	11, 47
Art. III, Sec. 1, 2,	1, 5, 54
Articles of Amendment to U.S. Const.:	
Amendment I	11
Amendment IV	12
Amendment V	12
Amendment VI	13, 32
Amendment VII	13
Amendment VIII	13
Amendment IX	14
Amendment X	14
Amendment XVI	11, 46, 61
Constitution of Connecticut:	
Article First, Sec. 10	14
Article Second.	15

	Page
United States Code	21, 40, 42, 44, 49, 50, 52, 53,
Title 1, USC	53
1 USC §204	35, 41, 50, 51
Title 2, USC	53
2 USC §285b	52
Title 18, USC	34
18 USC §3 and 4	29, 35
18 USC §241	19, 35
18 USC §242	19, 35
18 USC §872	20
18 USC §1001	19, 21, 35
18 USC §1621	20, 35
18 USC §1633	35
18 USC §3231	25, 36
18 USC §4001	36, 37
"Title 26 USC" (NOT LAW)	6, 7, 10, 18, 19, 21, 22, 35, 41, 42, 43, 44, 45, 46, 48, 51, 52, 61
"26 USC §7203" (NOT LAW)	6, 17, 22, 25, 36
28 USC §455	26, 27, 37, 38

	Page
28 USC §1291	38
28 USC §1292	38
28 USC §1252	1, 8, 9, 10
28 USC §2072	38
Code of Laws, 1926	40, 42
Internal Revenue Code of 1939 -	43, 48, 52
Internal Revenue Code of 1954	41 to45, 48, 51, 52, 61
Internal Revenue Code	41, 42, 47, 52
Internal Revenue Title	48
Internal Revenue Code §7203	46
Public Law:	
P.L. #440	40
P.L. #93-554	52
P.L. #94-386	52
Cases:	
Burnet v. Coronado Oil and Gas Co.285 U.S. 393 (1932) 406, 406, 412.	58 to 61
Helvering v. Mountain Producers Corp. 303 U.S. 376	59
B. & W. Taxi Co. v. B. & Y. Taxi Co. 276 U.S. 518, (1927), 533	59
Erie R.R. v. Tompkins,304 U.S. 64.	59, 60
Smith v. Allwright,321 U.S. 649, 655	60

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1984

CALVIN HOLDERMAN, JR.,

APPELLANT,

VS.

UNITED STATES OF AMERICA,

Appellee.

ON DIRECT APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT PURSUANT TO ART. III, U.S. CONSTITUTION, AND TITLE 28, U.S.C., §1252.

OPINIONS BELOW

There were no opinions issued by the United States Court of Appeals for the Second Circuit in this appeal, which bears the case title U.S.A. v. Holderman, Docket No. 84-1310.

On January 18, 1985, the circuit court "affirmed judgment by detailed order of the court without opinion" according to the docket sheet entry. That "order" contained the following disclaimer by the court:

> "N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court."

The defendant-appellant responded to the summary denial of his appeal on January 31, 1985, by filing for hearing and rehearing which consisted of four (4) separate claims [A, B, C, and D]. The appellant was informed that on February 20, 1985, rehearing was denied without comment.

The appellant filed for clarification of the rehearing denial, wanting to know which of his four (4) claims were denied. As of this date, the circuit court has failed to answer.

The circuit court simply stonewalled due process, and rubber stamped the unlawful acts and actions of the district court. The unlawfulness of said acts and actions is obvious since the earlier juris-

dictional challenge [84-1209], and this appeal [84-1310] WERE BOTH "DECIDED" ON THE SAME DAY, FEBRUARY 20, 1985, BY THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

PREFACE

This direct appeal is a companion to, but not to be joined or consolidated with, another appeal docketed this same date, in this Court. Both appeals stem from an unlawful "criminal" case fraudulently instituted in the United States District Court for the District of Connecticut under the case U.S.A. v. Holderman, "Criminal Docket" No. H-84-20 (MJB). An Interlocutory Appeal was filed in the United States Court of Appeals for the Second Circuit on June 4, 1984, bearing the Docket No. 84-1209, which was a direct jurisdictional challenge. The unlawful "criminal" case H-84-20 (MJB) was

permitted to continue in the district court by the circuit court, in spite of the case having been removed to the circuit court on appeal. After said unlawful "criminal" case was brought to an unlawful conclusion with the conviction and sentencing of the appellant herein, for a non-violation of a Non-Law, the appellant appealed the entire lawless proceedings to the United States Court of Appeals for the Second Circuit. That appeal bears the circuit court's Docket No. 84-1310. In both appeals, the lower courts proceeded using the Civil Rules in a "criminal" case, to achieve an unlawful purpose. In BOTH appeals, rehearing was "conveniently" denied February 20, 1985.

The jurisdictional statement regarding the Want of Jurisdiction of the lower courts, as docketed this same date in this Court, is incorporated by reference with

the same force and effect as if fully stated and alleged herein.

JURISDICTIONAL GROUNDS IN THIS COURT

The appellee (U.S.A.) has conferred de jure appellate jurisdiction to this Court by the ARMED CONQUEST of the appellant in the name of the United States of America; by unlawfully and fraudulently proceeding against the appellant in the lower courts of the United States of America; and by stonewalling all possibility of obtaining due process in appellee's lower courts.

The jurisdiction of this Court is invoked pursuant to Article III, Sec. 2 of the Constitution of the United States of America, which grants appellate jurisdiction to this court in all controversies in which the United States shall be a party. The title of this appeal is evidence that the United States of America is a de facto

party, and has in fact instituted the proceedings in the lower courts herein appealed. The United States is a de facto party, and this court has jurisdiction to hear this appeal.

This is a direct appeal from the decision(s) of the lower courts entered in Want of Jurisdiction. The district court has usurped the Power of the Legislative department and proceeded against the appellant in a "criminal" case based on a false and fraudulent "indictment" citing only alleged violations of Non-Law Title 26, U.S.C. § 7203. The Internal Revenue Code a/k/a Title 26, U.S.C. (which is not law) specifically confers only Civil jurisdiction on the district court. By that code, no court was designated to hear any "Criminal" provisions contained in that code. The district court "legislated" its own unlawful "criminal" jurisdiction to hear this

matter, and used civil procedures for that unlawful purpose. The circuit court affirmed that same usurpation of the Legislative Power by refusing to hear and determine on the merits. There was no statutory authority for federal jurisdiction cited in the lower courts. No statutory or Constitutional authority for federal jurisdiction, granted or implied to the lower courts, exists, which is why the appellant is compelled (at gunpoint) to file this appeal.

The Executive has conspired with the Judiciary to unlawfully "legislate" Title 26, U.S. Code into law, and apply that phony "law" to the appellant, in clear violation of the will and intent of the Congress of the United States of America.

The Executive has conspired with the Judiciary in an attempt to incarcerate the appellant for a non-violation of Non-Law. No court was, or could have been, granted

that Power. As a matter of fact, there is both Constitutional and statutory barriers to such unlawful incarceration, penalty, fine, etc.; which this Court, by Law, must address.

On the surface, the proceedings in the lower courts were made to appear as though they involved "federal taxes", when in fact, NO FEDERAL TAXES ARE INVOLVED.

There is also statutory authority for this direct appeal as well. That authority is contained in Title 28, U.S.C. §1252. The statutory authority is more limiting than its Constitutional authority. In citing said statutory authority, the appellant does not waive, intend to waive, or accept any statutory limits on the appellate jurisdiction of this Court which would limit the appellant's rights in any way. The appellant demands the broadest Constitutional application of the appellate

jurisdiction of the Supreme Court, as set forth and mandated in the Constitution of the United States of America.

With respect to the statutory authority for this direct appeal, Title 28, U.S.C. § 1252 provides for direct appeal from an interlocutory or final judgment, decree, or order of any court of the United States, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.

The unlawful proceedings are purported to be of a "criminal" nature, which is misleading. In fact, the Executive, together with the district and circuit courts, have exclusively used "Civil" rules and procedures throughout those unlawful "criminal" proceedings.

This appeal conforms to the requirements of Title 28, U.S.C., § 1252.

Moreover, the "rulings", "opinions", "determinations", "judgments", "appeals", and/or "decisions" have invalidated numerous Acts of Congress; another requirement for the invocation of Title 28 U.S.C. §1252.

CONSTITUTIONAL PROVISIONS INVOLVED

Appellant factually states that Title 26, U.S. Code has never been enacted into law and that Title 26, U.S. Code is unconstitutional because it violates Art. I, Sec. 1, U.S. Constitution.

***

Art. I, Sec. 8, Cl. 1, U.S. Const. mandates that:

> The Congress shall have the Power To lay and collect Taxes, Duties, imposts and Excises,

The Power to Collect Taxes rests exclusively with the Congress. The I.R.S. makes no pretense at being a part of the

Congress. "We The People" never granted Congress the power to delegate any of its duty or responsibility to Collect Taxes to an unlawful and outlaw "agency" such as the I.R.S.

***

Art. I, Sec. 9, Cl. 4, U.S. Const.

> No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

The 16th Amend. created no new form of tax, yet said 16th Amend. is the alleged authority under which the I.R.S. operates to unlawfully collect direct taxes. The 16th Amendment has never been lawfully ratified, and appellant has copies of certified documents to prove this.

***

AMENDMENT I

> Congress shall make no law... abridging the freedom of speech, or of the press;...and to petition the Government for a redress of grievances.

Appellant factually states that his freedom of speech and his right to petition for redress of grievances has been denied.

AMENDMENT IV

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated,...

Appellant factually states that his Fourth Amendment rights were violated in order to begin the fraudulent proceedings herein appealed.

***

AMENDMENT V

> No person shall be...deprived of life, liberty, or property, without due process of law;

Appellant factually states that ALL

proceedings held in the lower courts were in Want of Jurisdiction, a total abuse and denial of due process of law.

***

AMENDMENT VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,...and to have the Assistance of Counsel for his defence.

Appellant factually states that there is no federal criminal jurisdiction over the appellant. Any and all allegations of criminal activity would have to have been brought before a State jury, in a State court, and appellant would have to have had the Assistance of Counsel for his defense, all of which were denied to appellant.

***

AMENDMENTS VII AND VIII

Appellant factually states that he has been denied the protections of common law, and that any fine or punishment imposed would, under the circumstances, be excessive fines. Any punishment would also be cruel and unusual punishments.

***

AMENDMENTS IX AND X

Appellant factually states that no power has been given to the federal government to proceed against the appellant herein. In addition, the appellant reasserts his rights as the master of his government, in his sovereign capacity as a sovereign citizen of the State of Connecticut, and of the United States of America.

***

ARTICLE FIRST, SECTION 10, CONSTITUTION OF THE STATE OF CONNECTICUT

> All courts shall be open, and every person, for an injury done to him in his person, property or reputation,

> shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

Appellant factually states that right and justice have not been administered by the lower courts; that appellant's reputation has been irreparably harmed; and that whatever justice there is, is in fact for sale to the highest bidder.

***

ARTICLE SECOND
CONSTITUTION OF THE STATE OF CONNECTICUT

> The powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

Appellant factually states that the separation of powers mandated in both the State and National Constitutions has been breached by the agents of the appellee, each of whom is a State licensed and enfranchised attorney, and as such is a Com-

missioner of the Superior Court of the State of Connecticut. State licensed members of the State Courts are constitutionally barred from federal employment of any kind. Appellant is not only asserting that fact herein, he is also a plaintiff in two (2) lawsuits instituted in the State courts addressing this point of conflict of interest. The appellee's agents have admitted said conflict of interest in both suits. In addition, Judge Blumenfeld refused to recuse himself, after having raised this same issue sua sponte on May 14, 1984.

STATEMENT OF THE CASE

This case was begun in the United States District Court for the District of Connecticut (U.S.A. v. Holderman, H-84-20) as the result of an unlawful, false, and

fraudulent "information" being presented to the appellee's own grand jury. The appellant was not informed of the grand jury, nor allowed to testify. After the "indictment" was returned, the appellant's claims to the grand jury were ignored.

Said grand jury returned an unlawful, false, and fraudulent "indictment" in which the appellant was charged with five (5) "criminal" counts of violating Non-Law Title 26, U.S.C., §7203. There is no factual jurisdictional statement contained in said "indictment".

Based on said "indictment", the appellee caused an unlawful, false, and fraudulent "criminal" case to be instituted on February 24, 1984, U.S.A. v. Holderman, which bears the "Criminal Docket No. H-84-20 (MJB)".

Upon receipt of said "indictment" the appellant immediately responded by sending

a "Notice With Countercharges" addressed to the foreperson of the Grand Jury, MARY ANN DEFFLEY, on March 3, 1984.

That notice to the grand jury put it and the appellee on notice as follows:

(1) "The indictment charges violations of 26 USC which is not now, and never has been Law."
(2) "26 USC is Unconstitutional, so proclaimed by the Congress, because of its failure to conform to Art. 1, Sec. 1, U.S. Constitution which requires all laws be made by Congress."
(3) "The "laws" contained in 26 USC are unenforceable, so proclaimed by Congress, because they are "inconsistent, redundant, archaic, and obsolete".
(4) "The United States of America cannot lawfully be the Plaintiff since no United States law is involved."
(5) "Even assuming that 26 USC might be "law" for a moment, which it is not, the Grand Jury had no power to indict since the element of "willfullness" could never be present under the circumstances."
(6) "The Internal Revenue Service was never created by Congress and IRS is not lawfully a part of the United States Government. For this reason, IRS cannot be heard to complain as if it were the United States of America, which is a false and fraudulent claim. There is no lawful Plaintiff herein."
(7) "The U.S. Attorney and the unnamed IRS agents had no lawful business in bringing this matter before the Grand Jury,

since no United States law is involved in the indictment. The employees of the IRS and the U.S.A. involved herein were all acting outside the limits of their authority and jurisdiction in a criminally lawless manner."

(8) "It should be obvious that the U.S. Attorney engaged this Grand Jury in a criminally lawless pursuit with the plan and purpose of depriving the Accused of his unalienable rights (Liberty and Property). The U.S. Attorneys libelled the Accused and since they are "professionals at the Law", must have known exactly what they were doing in this matter."

"It is the responsibility of the Grand Jury to right the wrongs that it has been lawlessly engaged in by withdrawing the indictment against the Accused CALVIN HOLDERMAN, JR., at once."

"COUNTERCHARGES:"

"By now it should be clear to the Grand Jury that it has been duped into violating the rights of the Accused. If Justice is to prevail in this Nation, the Grand Jury must assume the responsibility of punishing those who criminally abused and tampered with the Grand Jury, and its lawful process. Such criminality cannot and must not be tolerated."

"Accordingly, the Accused HOLDERMAN asserts that this Grand Jury must indict the IRS agents involved herein as well as U.S. Attorney ALAN H. NEVAS and Assistant U.S. Attorney KURT F. ZIMMERMAN on the following charges:

1. Giving false and fraudulent statements to the Grand Jury such as 26 USC is law, in violation of 18 USC Section 1001.

2. Conspiracy and Conspiracy under color of law, as set forth in 18 USC

Section 241 and 242.

3. Perjury in violation of 18 USC Section 1621. All government employees swear to support the U.S. Constitution and when they fail to do so they have perjured themselves and violated their oath of office.

4. Attempted extortion in violation of 18 USC Section 872.

5. Conducting secret Grand Jury proceedings without permitting the Accused to even know about them, much less give testimony.

6. Initiating frivilous lawsuits and causing the Accused trauma and the wasting of his resources defending himself.

7. Numerous other crimes against the person and property of the Accused to be enumerated at a later date.

Such indictments would do much to abate the tyranny and lawlessness of those who pretend to be lawful authorities, but who constantly disregard the fact that the only lawful purpose of government is to protect the rights of its citizens. It is time that public servants be reminded of their duties and responsibilities. The Grand Jury has the power, authority, and jurisdiction over the persons and property of the U.S. Attorney, and the unnamed IRS employees as well, because they have broken the law in bringing phony charges to this Grand Jury. Indicting them for their crimes is within the jurisdiction of this Grand Jury. The Accused cannot too strongly urge this Grand Jury to indict the confessed criminals in this matter."

On March 6, 1984, the appellant filed a "Demand That Indictment Be With-

drawn Because It Is A Fraud". The title of that demand explains it all, and the body of that demand reads as follows:

"The Accused demands that the Indictment be withdrawn on the following grounds:

1. The court is without jurisdiction over the person or the subject matter of this indictment because no crime, felony, misdemeanor or violation against the United States has been or could have been committed by the Accused, or is alleged by the Plaintiff.

2. The indictment is a false and fraudulent statement as set forth in 18 USC-1001 et seq., because it alleges violations of 26 USC, and this is the sole basis of the indictment.

The indictment introduces 26 USC as legal evidence that a crime or crimes have been committed against the United States, which is directly opposite to the truth. The Preface page and page iii of the United States Code for the past 25 years or more offer legal evidence that 26 USC has not been enacted into law by Congress at any time during the past 25 years or more. In addition, the Preface page to the U.S. Code is legal evidence that:

A. 26 USC is Unconstitutional, so proclaimed by Congress, by its failure to conform to Art. I, Sec 1, U.S. Constitution, which requires all laws to be made by Congress.

B. The "laws" contained in 26 USC are unenforceable, so proclaimed by Congress, because they are "inconsistent, redundant, archaic, and obsolete". In other words 26 USC could not be enforced because it is

"void for vagueness". If Congress cannot understand it in over 25 years of trying to revise 26 USC in order to enact it into law, the Accused cannot have done anything "willful" because he could not be expected to understand it either.

3. The false indictment alleges 5 separate violations of a section of a title that has never been enacted as law, namely, 26 USC - 7203.

The indictment fraudulently alleges a violation of a legal fiction over which this court lacks jurisdiction, especially any criminal jurisdiction, since no crime, felony, misdemeanor or violation could have been, committed under 26 USC non-law.

4. There is no lawful Plaintiff in this indictment because no crime, felony, misdemeanor or violation against the United States has been alleged. The United States cannot lawfully be heard to complain in this court, since no law of the United States is involved in the indictment, nor can the U.S. Attorney lawfully be heard on behalf of the United States in this matter.

5. Attached hereto is a copy of a memorandum prepared by the Congressional Research Service of the Library of Congress entitled: "Why Title 26 of the United States Code Has Not Been Enacted As Positive Law", and is dated May 7, 1981.

The Accused is not interested in "why" 26 USC has not been enacted as law, even though he may be at a later date. The only thing of importance to the Accused at this time is the fact that 26 USC has not been enacted as law by the Congress of the United States, which means that 26 USC is not law.

For all of the foregoing reasons and others, the Accused demands withdrawal of the false and fraudulent indictment, forthwith, since there is no matter

lawfully before this Court for it to hear and determine (failure to state a cause upon which relief may be granted)."

There was no lawful basis for this case to proceed, once the jurisdiction of the Grand Jury to indict, and the jurisdiction of the district court to hear and determine, was challenged. The issue of JURISDICTION has never been addressed or settled by the lower courts. Instead, both courts have steamrolled over the jurisdictional challenge, and proceeded as if they had jurisdiction. For example:

(A) The court docket sheet (H-84-20 MJB) contains the following entry for March 7, 1984:

"Def. not present in Court - he is outside picketing. Wife testifies that he will not enter courtroom voluntarily. Mag. directs Marshal's to ask def. to enter courtroom. Def. refuses to enter courtroom. Mag. orders that an arrest warrant be issued immediately. Def. refuses to plead on any count. PLEA of NOT GUILTY entered to all counts by Magistrate. Discovery motions due 3/14/84 - Other substantive motions due 3/28/84 - Govt. responses due 4/4/84. Bond set at $10,000.00 non-surety. For the

purposes of employment, there is no limit to travel. Bond extended otherwise territorial limits of the U.S. (FOE)".

In light of the fact that the appellant had earlier filed his "Demand That Indictment Be Withdrawn Because It Is A Fraud", and also the fact that the Appellant had not hired U.S. Magistrate F. OWEN EAGAN as his attorney, it is an inescapable fact that U.S. Magistrate F. OWEN EAGAN rendered a final determination of this case when he entered a "Plea" of NOT GUILTY on all counts. The appellant was found to be NOT GUILTY by order of U.S. Magistrate F. OWEN EAGAN, and that order was not appealed by the appellee herein.

In spite of the NOT GUILTY verdict of U.S. Magistrate F. OWEN EAGAN, matters unlawfully proceeded.

On April 12, 1984, the appellee responded to the appellant's "Demand That Indictment Be Withdrawn Because It Is A

Fraud" with an unsworn statement in which the appellee's agent falsely stated that:

"The Court has jurisdiction over this criminal case which is brought under a valid provision of the United States Code, 26 U.S.C. §7203; 18 U.S.C. §3231;"

On April 30, 1984, the appellant filed an "Ex Parte Demand And Order" which reads as follows:

"Defendant, CALVIN HOLDERMAN, JR., filed a Demand That Indictment Be Withdrawn Because It is A Fraud, with this Court on March 6, 1984. Said Demand was sworn to on March 5, 1984.

Plaintiffs have not disputed or controverted the allegations contained in that sworn demand, and the time to do so has run. All allegations contained in that demand are now admitted facts, by virtue of Plaintiffs failure to deny or in any way challenge said demand, nor could they make such denial or challenge.

Plaintiffs did, however, endevor to misconstrue said demand by calling it a motion to dismiss, which it was not, since the Defendant could make no such motion without granting jurisdiction to this Court, and Defendant has made every effort to prevent granting any jurisdiction to this Court until such time as jurisdiction is established under law. Plaintiffs made such interpretation and judicial determination or are attempting to do so by their unsworn "response" of April 12, 1984.

Defendant now demands that the indictment be withdrawn and this case be dismissed for Plaintiffs failure and refusal to state a cause upon which relief may be granted."

May 2, 1984. DENIED. M. Joseph Blumenfeld.

On May 4, 1984, the appellant filed his "Special Appearance Continued" which reads as follows:

"Defendant continues his special appearance to direct the attention of this Court to the fact that jurisdiction has not yet been established by the plaintiffs.

Further, the attention of this Court is directed to the fact that this Court cannot proceed any further until such time as the jurisdiction challenge entered herein on March 6, 1984 by the Defendant is finally determined and settled and that all proceedings herein are automatically stayed until [such] time as the jurisdictional matter is finally determined and settled.

In addition, the attention of this Court is directed to 28 USC Sec. 455, which reads in part, as follows:

> "Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest..."

Because of longstanding disinformation and propaganda, most people today, including justices and judges and U.S. Attorneys, believe that the IRS collects taxes with which to pay the wages, salaries, pensions, etc. of government employees.

All federal justices and judges are

government employees, and as such, have a substantial interest in continuing the system and maintaining the status quo. That substantial interest is their jobs, salaries, pensions and other fringe benefits, which is about as substantial an interest as you can get. Any and all federal justices and judges would have to disqualify themselves from hearing this case because of substantial interest, also known as conflict of interest.

Under the circumstances set forth in 28 USC 455, it would appear that the U.S. Attorney is either in the wrong court, or is wilfully, knowingly and maliciously attempting to place the justices and judges in danger of lawsuits based on conflict of interest.

EQUITY JURISDICTION DENIED

Defendant herein rejects the equity jurisdiction of this Court, and all that such rejection implies. Defendant has never been asked to enter into the equity jurisdiction of this Court, so he could never have consented to said equity jurisdiction, for any reason. To avoid any possibility of misunderstanding by anyone, Defendant is now on record as having rejected the equity jurisdiction of this Court in this matter."

On May 8, 1984, the appellee filed a "Notice Of Filing Documents Under Seal", which reads as follows:

"Assistant United States Attorney Albert S. Dabrowski, acting on behalf of Federal Grand Jury No. H-83-1 gives Notice to Calvin Holderman, Jr., as follows:

1. On March 5, 1984, the United States

Attorney's Office at Hartford received an envelope, attached hereto and filed under seal, addressed to Mary Ann Deffley, Foreman (sic), U.S. Grand Jury, U.S. Court House, 450 Main St., Hartford, CT 06103 from Calvin Holderman, Jr., R.F.D. 1, Glen Eyrie Farm, New Milford, Conn. 06776. Between March 5, 1984 and April 5, 1984 (the date of the next session of Grand Jury No. H-83-1) the envelope was kept, unopened, in the possession and control of the undersigned Assistant United States Attorney.

2. On April 5, 1984, the undersigned Assistant United States Attorney handed the envelope to the deputy foreperson of Grand Jury No. H-83-1, in the presence of sixteen or more Grand Jurors, and requested the Grand Jury to examine its contents. The undersigned Assistant United States Attorney left the Grand Jury room while the contents of the envelope were examined.

3. After examining the contents of the envelope the Grand Jury returned the envelope to the undersigned Assistant United States Attorney with a request that it be filed under seal with the United States District Judge assigned to this case, together with a copy of the transcript of the Grand Jury proceedings, with notice to Mr. Holderman. (See Transcript of Proceedings at 8-9).

4. These documents are forwarded to the Court for "whatever action [the District Court] deems appropriate" (Transcript of proceedings at 7.)"

So, the Grand Jury passed the ball to Judge BLUMENFELD for his action. It should be noted here that the appellant fulfilled

his responsibility under Title 18, U.S.C., §§3, and 4, and that Judge BLUMENFELD was required by law (18 USC §§3 and 4), to act on that verified criminal complaint. Judge BLUMENFELD did not act directly on this complaint, he swept it under the rug.

On June 7, 1984, the appellant filed a "Claim For Determination By The Grand Jury", which was ignored by the court.

On February 20, 1985, rehearing was simultaneously denied by the United States Court of Appeals for the Second Circuit, of the jurisdictional challenge (84-1209) and the "conviction" (84-1310). The denial in 84-1209 is proof positive that ALL proceedings held in the district court by the "government" (appellee) AFTER June 4, 1984, were unlawful, since the matter of jurisdiction had not been resolved until February 20, 1985, at the earliest. That denial is the subject of a direct appeal

docketed this date in this Court, under separate docket number. The matter of jurisdiction has still not been settled.

Accordingly, the arrests, "trial", "conviction", "sentence", and more recently the bench warrants, SWAT team raids, etc. which occurred after June 4, 1984 were, and are, lawless acts and actions on the part of the appellee.

CRIMINAL VS. CIVIL

The initial proceeding in the district court was docketed as "Criminal Docket No. H-84-20 (MJB)", which was followed by a "criminal" appeal bearing the "Criminal Docket No. 84-1209" in the circuit court.

That the proceedings in the lower courts were fraudulently labeled "criminal" is evidenced by the fact that from their inception, the courts treated all of the appellants Claims and Demands as "motions"

and/or "petitions" used in civil actions.

Demands are assertions of rights, and apply to criminal proceedings. None of the appellant's claims or demands were ever addressed or settled. ALL of the appellant's claims and demands were converted or construed as "motions" and summarily denied. "Motions" are used exclusively in civil actions. ALL OF APPELLEE'S PAPERS WERE "MOTIONS".

It is clear from the way the courts handled this "criminal" case that <u>it never has been a criminal case</u>. It has been a civil action with criminal penalites, improperly begun and pursued, disguised as a criminal case. It was, and is, a fraud, as the appellant claimed in the first set of papers he entered in answer to the phony indictment, namely his:

(1) "Notice With Countercharges".

(2) "Demand That Indictment Be

Withdrawn Because It Is A Fraud".

It is also clear that in treating this "criminal" case as a civil action, numerous Acts of Congress were invalidated by the decisions of the lower courts.

There is no Constitutional authority for the federal courts to have criminal jurisdiction over any crimes except Treason, Piracy, and Counterfeiting. Moreover, there is no Constitutional authority for a DIRECT relationship between a private citizen and the government of the United States of America.

The Constitutional chain of command interposes the States between the citizen and the Unites States, which is why the Sixth Article of Amendment to the U.S. Constitution requires that:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district [of the State] wherein the crime shall have been committed,..." (emphasis added)

The reason for this becomes obvious in the instant proceedings. In the matter now on appeal, the "laws" involved, the prosecutor, the courts, the federal public defender, the grand jury, and this court are presumably ALL part of Appellee United States of America. It is impossible for the appellant to obtain a fair and impartial jury when said jury is employed, instructed, and paid by the appellee. It is impossible to lawfully try a "federal crime" or "federal civil action", where the United States is the Plaintiff/Petitioner, anywhere but in a State court. The only possible exceptions are the Constitutionally mandated crimes of Treason, Piracy, and Counterfeiting, where special treatment is specified.

If there was such a thing as a "crime" involving "income taxes", "filing income tax returns", etc., then Congress would

have:

(A) Made such "crimes" a part of the Criminal Code (18 USC), which Congress has not done, and/or,

(B) Assigned "criminal jurisdiction" to some federal court in the Internal Revenue Code, which Congress has not done.

It is clear that the "criminal" proceedings had in the lower courts are without any authority in Law, or in fact.

It is also clear that the unlawful proceedings in the lower courts were processed as Civil proceedings, with the plan and purpose of unlawfully imposing criminal sanctions upon the appellant, under color of law, and in violation of the appellant's rights.

ACTS OF CONGRESS INVALIDATED

Note: In citing the appropriate sections of the United States Code below, the appellant is incorporating by reference, as if fully stated and alleged, the Public Law

and Statutes At Large.

The United States Attorney, the Grand Jury, and the district court, in stonewalling the Notice With Countercharges, as well as the Demand That The Indictment Be Withdrawn Because It Is A Fraud, etc., thereby invalidated the following Acts of Congress:

Art. I, Sec. 1 of the U.S. Constitution, and Title 1, U.S.C., §204, by "legislating" "Title 26, U.S.C." into law, and using it as "legal" evidence against the appellant.

Title 18, U.S.C., §§3, 4, 241, 242, by deciding that it was proper to conspire to deprive the appellant of his unalienable rights, under color of law.

Title 18, U.S.C., §§1001, 1621, 1633, by knowingly, willingly, and maliciously proceeding to trial, conviction, and sentencing of the appellant upon unlawful,

false, and fraudulent information, after having been given notice that such information was unlawful, false, and fraudulent.

Title 18, U.S.C., §3231, which only grants jurisdiction to the district court where a United States law has been violated. No U.S. Law has been violated, or alleged to have been violated by the appellant.

Title 18, U.S.C., §4001, which prohibits any citizen from being incarcerated or otherwise detained by the United States except pursuant to an Act of Congress. Since no Act of Congress was cited in the "indictment", the arrest of the appellant was an unlawful detention in furtherance of the conspiracy against the unalienable rights of the appellant. In addition, the purpose of the "criminal" case H-84-20 (MJB) was to incarcerate the appellant pursuant to Non-Law 26 USC §7203.

By continuing that fraudulent "criminal" case, Title 18, U.S.C., §4001 was invalidated by the district court.

Title 28, U.S.C., §455 requires justices and judges to disqualify themselves from any case in which they have a substantial interest. Judge Blumenfeld raised the issue of recusing himself on 5-14-84, and decided not to recuse, sua sponte. Judge Meskill failed to disqualify himself, even after notice from the Assistant U.S. Attorney MICHAEL HARTMERE. It was not, and is not, the responsibility of the appellant to demand that a judge disqualify himself in a matter in which that judge is a defendant in another case in which the appellant is one of the plaintiffs. Title 28, U.S.C.,§455 places that responsibility upon the judge, not the appellant. Judge Blumenfeld's sua sponte decision not to recuse, and Judge Meskill's

failure to disqualify himself, have invalidated Title 28, U.S.C. §455.

Title 28, U.S.C., §2072 provides that:

> "Such [civil] rules shall not abridge, enlarge or modify any substantive right and shall preserve the right to trial by jury as at common law and as declared by the Seventh Amendment to the Constitution."

The rules of civil procedure were used throughout proceedings had in the lower courts, including, but not limited to the dismissal of the appeal by CA2, in 84-1209. Said dismissal was based on a motion by the appellee pursuant to 28 USC §§1291, 1292. The dismissal of appeal based on the "final order rule", invalidated Title 28, U.S.C., §2072.

In all of the above-mentioned decisions that invalidated Acts of Congress as contained in those sections of the United States Code mentioned, the United States

Court of Appeals affirmed said invalidations by its failure and refusal to hear the appeal.(Record on appeal, U.S.A. v. Holderman, CA2, 84-1209 and 84-1310).

STATEMENT OF REASONS WHY THE QUESTIONS PRESENTED REQUIRE PLENARY CONSIDERATION, WITH BRIEFS ON THE MERITS AND ORAL ARGUMENT, FOR THEIR RESOLUTION

There has been widespread misconception of conflicting Acts of Congress which involve the entire United States Code, and the Statutes At Large. Congress itself has created conflicting law which has never been addressed or settled by this or any other court. For this reason, and others, it is necessary for this Court to address ALL issues raised in the lower courts in this matter, as well as making a determination on the validity of the United States Code, so that the Congress will be compel-

led to straighten out the mess it has created for the appellant, for all courts, and for the Executive department. In order that this Court may understand the arguments regarding the U.S. Code made at the lower court level, it might prove helpful and informative to chronologically illustrate the issues presented by the United States Code which have never been addressed or settled, as follows:

THE UNITED STATES CODE

(A) The United States Code originated as "The Code Of The Laws Of The United States Of America, 1925 Edition" on June 30, 1926 [Public No. 440] Chapter 712. The will and intent of the Congress was to "establish prima facie the laws of the United States, general and permanent in their nature."

(B) The Congress changed the plan and

purpose of the Code(July 30, 1947, ch. 388, 61 Stat. 638) so that it might provide:

> "That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained." Title 1, U.S.C., § 204(a).

(C) At the end of Title 1, U.S.C., § 204 there is the following statement:

> "Title 26, Internal Revenue Code"
> "The Internal Revenue Code of 1954 was enacted in the form of a separate code by act August 16, 1954, ch. 736, 68A Stat. 1. The sections of Title 26, United States Code, are identical to the sections of the Internal Revenue Code." (emphasis added)

(D) Title 26, U.S.C. has never been enacted into law by the Congress of the United States.

(E) Congress has plainly stated the reasons for never enacting Title 26 of the United States Code into law, namely, that said Title 26 is "inconsistent, redundant, archaic, and obsolete".

(F) More recently, Congress changed

the reason slightly by omitting the word "archaic", while retaining the "inconsistent, redundant, and obsolete".

(G) Since "The sections of Title 26, United States Code, are identical to the sections of the Internal Revenue Code", it follows that since Title 26, United States Code is "inconsistent, redundant, and obsolete", so too is the Internal Revenue Code of 1954. If this were not so, then the two (2) would not be IDENTICAL.

(H) The will and intent of the Congress is the law. In this instant the Congress:

(1) Created the Code of Laws of the United States (1926) as prima facie evidence.

(2) Proclaimed ALL 50 titles of the United States Code (1946) to be "inconsistent, redundant, archaic, and obsolete".

(3) Included in that proclamation the

fact that the Internal Revenue Code of 1939, as contained in Title 26, U.S.C., is "inconsistent, redundant, archaic, and obsolete" as of 1946.

(4) Began a project designed to change the Code from prima facie evidence to legal evidence (1946), which required each title of said Code to be revised and enacted into law.

(5) Enacted the Internal Revenue Code of 1954.

(6) Early in 1955, inserted the Internal Revenue Code of 1954 into Title 26 of the United States Code, at which time said Internal Revenue Code of 1954 was stamped by the Congress as "inconsistent, redundant, archaic, and obsolete."

(7) Has proclaimed that the Internal Revenue Code of 1954 a/k/a Title 26 of the United States Code is "inconsistent, redundant, archaic, and obsolete" on the preface

page of the United States Code each year from 1956 to date.

(8) Mandated that any and all amendments to said Internal Revenue Code of 1954 likewise became "inconsistent, redundant, archaic, and obsolete" less than one year after their enactments, when they became incorporated in Title 26 of the U.S. Code.

(9) Has been declaring its will and intent clearly and consistently for at least the past 30 years. On a yearly basis, the Congress warned all citizens to be wary because the Internal Revenue Code of 1954 was, and is, "inconsistent, redundant, archaic, and obsolete".

(10) Has been declaring its will and intent clearly and consistently for at least the past 30 years. Namely, that the Internal Revenue Code of 1954, as amended and set forth in Title 26 of the United States Code, IS NOT LAW. It will never be

law until Congress decides to make it law, which it can never do constitutionally. (See M, N, and O following).

(I) Article I, Section 1 of the Constitution of the United States mandates that:

"ALL legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." (emphasis added)

The Constitution is clear and not subject to misinterpretation. The word "ALL" is comprehensive. If the Congress did not make a "law" then there is no law. There are no exceptions possible.

(J) The Congress did not enact Title 26, U.S.C. into law. Therefore, Title 26, U.S.C. is NOT LAW.

(K) In 1955, or thereabouts, the Congress trashed and/or repealed the Internal Revenue Code of 1954, by incorporating it in Title 26, U.S. Code as NOT LAW.

(L) Section 7203 of the Internal Revenue Code, which is the "authority" used to attempt to jail the appellant, was part of the original enactment of August 16, 1954. Said Section 7203 became unenforceable by proclamation of Congress on, or about, the first quarter of 1955, when said section became a part of "inconsistent, redundant, archaic, and obsolete Title 26, U.S.C. Its Non-Law status has not changed in the past 30 years. It remains NOT-LAW.

(M) The 16th Article of Amendment to the Constitution of the United States of America created no new form of taxation. We have the word of the Congress and the Supreme Court attesting to this fact. Recently, certified evidence has been accumulated of the fact that the Sixteenth Amendment was not ratified, as required by law. Part of that evidence includes the fact that Connecticut rejected the 16th

Amendment completely.

(N) The Constitution of the United States of America, at Article I,Section 9, prohibits Congress from enacting a direct tax, except in Proportion to the Census or Enumeration (apportionment).

(O) The Internal Revenue Service has been levying direct taxes upon private property, without apportionment, and in violation of Art. I, Sec. 9, U.S. Constitution. This is in violation of the unalienable and Constitutionally guaranteed and protected property rights, and the appellee has attempted to subject the appellant to unlawful taxation, which was/is the plan and purpose of the unlawful proceedings held in the lower courts.

According to the annual proclamation of Congress, for at least the past 30 years, the "Internal Revenue Code" as amended;

"The Internal Revenue Title" as amended; the "Internal Revenue Code of 1939" as amended; the "Internal Revenue Code of 1954" as amended; and "Title 26 of the United States Code", all being IDENTICAL, are ALL "inconsistent, redundant, archaic, and obsolete". Not only are they unenforceable for that reason, but, Congress having set the requirement that they be incorporated into Title 26, U.S.C., has proclaimed, on an annual basis for the past 30 years, that Title 26, U.S.C. has not been enacted into law.

Since ALL LAW must be made by Congress pursuant to Article I, Sec. 1, of the Constitution of the United States of America, it factually follows that Congress has proclaimed Title 26, U.S.C. to be unconstitutional on its face [Congress has not enacted it into law].

From the foregoing, it is evident that

there are no valid "tax" laws involved in this lawsuit, nor had the Internal Revenue Service any lawful power or authority under any "internal revenue statutes" to institute proceedings against the appellant, nor is the United States of America the de jure plaintiff-appellee.

The appellant recognizes that this is a difficult idea for professionals at the law to accept. This idea is even harder for the courts to accept than it is for the appellant, because they have been brainwashed into unlawfully enforcing said "income tax laws", and have been doing so for a long time. However, the fact that the courts have been misled, as well as everyone else, doesn't change the facts; and one of the facts is that NO FEDERAL TAXES ARE INVOLVED in this appeal.

THE UNITED STATES CODE AS LEGAL EVIDENCE

As already set forth above, the plan and purpose of the United States Code was changed (July 30, 1947, ch. 388, 61 Stat. 638) in 1947, so that it might provide:

> "That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained." Title 1, U.S.C., § 204(a)

Congress, in its infinite wisdom, by its 1947 enactment, has established two (2) forms of legal evidence within the United States Code as follows:

(1) In the case of those titles of the Code that have been enacted into positive law, the text of said title is legal evidence, as per Title 1, U.S.C. § 204(a).

(2) In the case of those titles of the Code that have not been enacted into positive law, i.e. Titles 2, 6, 7, 8, 12, 15, 16, 19, 20, 21, 22, 24, 25, 26, 27, 29, 30, 33, 36, 40, 41, 42, 43, 45, 46, 47, 48,

and 50, the Code offers legal evidence that said text is "inconsistent, redundant, archaic, and obsolete", as per the preface page to the yearly edition/supplement of said Code.

In the case of Title 26, U.S.C., the text of the Internal Revenue Code of 1954, as amended, and the text of Title 26, U.S.C. are IDENTICAL, as per the notes at the end of 1 U.S.C. § 204.

Title 26, U.S.C. has not been enacted into positive law by Congress, according to Congress. Since it does not conform to the Constitutional mandate set forth in Art. I, Sec 1, U.S. Constitution, it is a fact that said Title 26 of the United States Code is unconstitutional on its face.

The Internal Revenue Code of 1954 may have been valid law in 1954, when it was enacted as Public Law. However, it was repealed, trashed, and discarded by the

Congress in 1955, when it was incorporated into Title 26, U.S.C. Since 1955, the United States Code offers legal evidence from the Congress, that the Internal Revenue Code of 1939, and the Internal Revenue Code of 1954, as amended and incorporated into Title 26, U.S.C., are UNCONSTITUTIONAL, INCONSISTENT, REDUNDANT, ARCHAIC, AND OBSOLETE. A more positive statement of the NON-LAW status of the Internal Revenue Code/ 26 U.S.C. is unnecessary, since legal evidence of that fact has been furnished by the Congress itself, for the past 30 years.

THE UNITED STATES CODE
FROM 1974 TO DATE

Public Law 93-554, title 1, ch. III, §101, Dec. 27, 1974, 88 Stat. 1777; Pub. L. 94-386, §1, Aug. 14, 1976, 90 Stat. 1170 (Title 2, U.S.C., §285b) further altered the United States Code by changing

the authority for the preparation and publication of said Code. Until 1974, the United States Code was published under the authority of Title 1, U.S.C., which had been enacted into law. (See Title Pages of the U.S. Code).

Since 1975, the authority for the preparation and publication of the United States Code is vested in Title 2, U.S.C., which is not now, and never has been enacted into law. Since 1975, the very authority for the United States Code has been declared by Congress to be "inconsistent, redundant, and obsolete". A very sound argument can be made that such change invalidated the entire United States Code, since it undermined the very authority for the Code. Even those titles that previously had been enacted into law are now tainted by drawing their authority from a Non-Law source.

It is, or should be, evident that the Congress of the United States has enacted certain Acts which are contradictory in nature, and in fact. Such irresponsibility has caused grievous harm to the appellant, and has left the Federal Judiciary and Executive without statutory authority of any kind.

In spite of the probable Want of Statutory authority, this Court still possesses Constitutional authority under Art. III of the Constitution of the United States of America, to right the wrongs perpetrated against the appellant.

UNLAWFUL MERGING OF THE COURTS

It is evident from the proceedings on appeal that the United States District Court for the District of Connecticut, the United States Court of Appeals for the Second Circuit, and the Supreme Court of

the United States have been unlawfully merged into one court, in this case, for the following reasons:

(a) While the matter of jurisdiction remains unsettled because of CA2 Docket No. 84-1209 [rehearing denied 2-20-85], which is on separate appeal in this Court, the district court proceeded to trial, conviction, and sentencing, thus effectively merging the district court with the circuit court.

(b) All three (3) courts denied stays pending appeal in 84-1209, which enabled said trial, conviction and sentence to take place. Thus, the three (3) courts merged for the purpose of denying due process to the appellant.

(c) Without the jurisdiction of the district court having been settled, the appellant was arrested, and charged with bail-jumping, a felony, in U.S.A. v.

Holderman, U.S.D.C. Docket No. H-84-67.That phony charge resulted in a jury trial that ended with the judge removing the case from the jury, and Judge Blumenfeld directing a verdict of acquittal.

(d) Following the unlawful trial, conviction and sentencing, the appellant was forced to post bond pending appeal. Neither appeal (84-1209 and 84-1310) has been finally settled, and both are in fact in this Court since March 12, 1985. In spite of this fact, the district court has issued an arrest warrant for the appellant to compel him to serve a sentence unlawfully imposed in Want of Jurisdiction, when that sentence has not been finally determined by this or any other court. The district court has no more regard for the separation of the Supreme Court of the United States from the lower courts, than it had for the separation of the circuit

court from the district court. In practice, ALL THREE (3) FEDERAL COURTS - District court, Circuit court of Appeals, and the Supreme Court - have been effectively merged into one court, namely, the district court. The district court has become the highest court, with the circuit and supreme courts merely acting as rubber-stamps for that court.

(e) Once a case has been removed from a lower court to a higher court, the case is no longer in the lower court. There is no basis in law, or in fact, for the lower court to take any action whatsoever, until the case is returned by the higher court. Any collaboration or combining of the same case in two (2) courts simultaneously, defeats the purpose of the court system, and defeats the possibility of obtaining due process from the courts.

From the record, it is obvious that the

courts were in fact unlawfully merged in this case, in order to achieve an unlawful purpose, namely, the incarceration of the appellant where no crime cognizable by any federal court had been committed by the appellant.

LATENESS OF THE HOUR

If a statute, long in existence, may be found to be fraudulent, or if, in its passage through the legislative process, a fraud was perpetrated, what is the validity of a claim that, because the statute has been relied upon for many years, it must stand in spite of the fraud?

In order to answer this question it is necessary to understand that "stare decisis is not, like the rule of res judicata, a universal, inexorable command," and that it "is not inflexible." Justice Brandeis, dissenting, in Burnet v. Coronado Oil & Gas Co., 285 U.S. 393 (1932), 405, 406. In

1938, Burnet, supra, was overruled by Helvering v. Mountain Producers Corp., 303 U.S. 376 and Justice Brandeis' dissent was vindicated. This is the liberal principle set forth by Justice Holmes, dissenting, in B.& W. Taxi Co. v. B.& Y Taxi Co., 276 U.S. 518 (1927), 533 -

> "...in my opinion the prevailing doctrine has been accepted upon a subtle fallacy that never has been analyzed. If I am right the fallacy has resulted in an unconstitutional assumption of powers by the Courts of the United States which no lapse of time or respectable array of opinion should make us hesitate to correct."

Justice Holmes' principle of review requires reversal, no matter how much time may have passed or how many previous decisions may have been made, if the foundation for a statute or judicial decision is illusionary. The principle was used to reverse a one-hundred-year-old decision in Erie R.R. v. Tompkins, 304

U.S. 64 (overruling Swift v. Tyson, 16 Pet. 1).

In Smith v. Allwright, 321 U.S. 649, (1943), 665, Justice Holmes' principle is followed -

> "...when convinced of former error, this Court has never felt constrained to follow precedent. In Constitutional questions, where correction depends upon amendment and not upon legislative action this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions. This has long been accepted practice, and this practice has continued to this day. This is particularly true when the decision believed erroneous is the application of a constitutional principle rather than an interpretation of the Constitution to extract the principle itself."

Obviously, if there has been a fraud in the passage of a statute, even more so in the ratification of a constitutional amendment, there can be nothing to apply and, thus, any previous application of the constitutional principles accruing from

such a constitutional amendment must fall, and they must fall no matter how much time has passed or how many false and/or fraudulent applications have been made. No decision of any court can be given stature, even under stare decisis, if, in the determination of a fact, that court has made an error. Burnet, supra, 412. A very grave error in the determination of the existence of the ratification of the Sixteenth Amendment has been made and has continued to be made to this very day.

The 16th Amendment is the basis for the "income tax laws". Said amendment was never lawfully ratified, and confers no lawful authority whatsoever. The Internal Revenue Code of 1954 a/k/a Title 26 of the United States Code is allegedly based upon the false and fraudulent alleged ratification of the 16th Amendment.

CONCLUSION

It is to the Constitutional authority of this Court that the appellant directs this appeal, and is why this is a direct appeal to this Court.

APPELLEE (United States of America) has forced this Court, at gunpoint, to hear and determine this appeal by its flagrant and continuing violent and unlawful armed conquest of the appellant.

The issues raised are of major import; have never before been addressed; are within the appellate jurisdiction of this Court; and therefore, by law, must be addressed by this Court.

Failure to address these issues before now has resulted in irreparable harm and damage to our Constitutional Republic; to the laws which govern this Nation; and to the unalienable rights of the appellant.

Dated: April 3, 1985

Calvin Holderman Jr

CALVIN HOLDERMAN, JR.
R.F.D. #1, GLEN EYRIE FARM
NEW MILFORD, CT 06776

CERTIFICATE OF SERVICE

CALVIN HOLDERMAN, JR. certifies that he served the within JURISDICTIONAL STATEMENT, and APPENDIX on counsel for the appellee by enclosing a copy thereof in an envelope, first class postage prepaid, addressed to:

SOLICITOR GENERAL OF THE UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

and depositing same in the United States mails at Washington, D.C., the same date as the date of docketing same.

Calvin Holderman Jr

CALVIN HOLDERMAN, JR.
R.F.D. #1, GLEN EYRIE FARM
NEW MILFORD, CT 06776

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held in the United States Courthouse in the City of New York, on the 20th day of February, one thousand nine hundred and eighty five.

Present:

HON. JAMES L. OAKES
HON. RICHARD J. CARDAMONE
HON. LAWRENCE W. PIERCE
Circuit Judges

UNITED STATES OF AMERICA,	)	
Appellee,	)	
v.	)	No. 84-1310
CALVIN HOLDERMAN, JR.	)	
Defendant-Appellant	)	

A petition for rehearing having been filed herein by plaintiff-appellant Calvin Holderman, Jr., pro-se,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

ELAINE B. GOLDSMITH
Clerk

Mandate? issued March 8, 1985?

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 18th day of January on thousand nine hundered and eighty-five.

Present: HON. JAMES L. OAKES
HON. RICHARD J CARDAMONE
HON. LAWRENCE W. PIERCE
Circuit Judges,

UNITED STATES OF AMERICA, Appellee, v. CALVIN HOLDERMAN, JR. Defendant-Appellant	O R D E R No. 84-1310

Calvin Holderman, Jr., appeals from the judgment of conviction entered by United States District Judge Blumenfeld of the District of Connecticut on August 21, 1984 in Hartford. On February 24, 1984 a grand jury returned an indictment charging Holderman with wilfully failing to file federal income tax returns in violation of Title 26 U.S.C. §7203 -- one count for each of the years 1977-1981. At a hearing on motions brought by Holderman's attorney and by Holderman himself, Judge Blumenfeld denied appellant's pro se challenges to the validity of the charges and the court's jurisdiction. Holderman sought to appeal Judge Blumenfeld's ruling and to stay the district court case. After rejecting the

appellant's attempt to stay the proceeding below, this Court dismissed Holderman's appeal on October 1, 1984.

Two principal arguments are raised on appeal: first, that Congress has never enacted Title 26 of the United States Code into "positive law" and that therefore appellant cannot be prosecuted under that Title; second, the district court did not have jurisdiction because of the pendency of his appeal.

With respect to Holderman's first argument, the fact that Title 26 has not been enacted as "positive law" affects neither the validity of the criminal charges brought against him nor the jurisdiction of the district court. Although it is true that Title 26 has not been enacted into "positive law", the only distinction between titles that have been so designated and titles that have not been, is that those designated as "positive law" are irrebuttable evidence of the law and those not so designated are merely prima facie evidence. The latter can be rebutted if it appears that when compared with "the statutes at large . . . the two are inconsistent." Stephan v. United States, 319 U.S. 423, 426 (1943); United States v. Welden, 377 U.S. 98 n.4 (1964). With respect to Holderman's second argument, the fact that he immediately appealed the district judge's denial of his motion to dismiss did not divest the district court of jurisdiction. The denial of the motion was not a final appealable order. 28 U.S.C. §1291. Golden v. United States, 239 F.2d 877 (2d Cir. 1956). We find no merit to any of appellant's other arguments.

Accordingly, the judgment of conviction is affirmed.

James L. Oakes, U.S.C.J.
Richard J. Cardamone, U.S.C.J.
Lawrence W. Pierce, U.S.C.J.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

A TRUE COPY
ELAINE B. GOLDSMITH
/s/
Clerk

Rehearing denied February 20, 1985
Mandate? issued March 8, 1985?